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*Attorneys for Defendants Vemma Nutrition
Company and Vemma International Holdings,
Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Federal Trade Commission,

Plaintiff,

vs.

Vemma Nutrition Company, *et al.*,

Defendants.

NO. CV-15-01578-PHX-JJT

**AGREED MOTION TO ALLOW
SALE OF FURNITURE, FIXTURES
AND EQUIPMENT**

Defendants Vemma Nutrition Company (“Vemma”) and Vemma International Holdings, Inc. (“Holdings,” and with Vemma, the “Corporate Defendants”), by and through undersigned counsel, submit the following agreed motion and respectfully ask this Court to issue an Order approving the parties’ agreement, as follows:

1. Pursuant to the Court’s Order dated September 18, 2015 (Dkt. #118; the “Interim Order”), the “Corporate Defendants shall not transfer or dispose of any material assets (beyond ordinary course sales and related transactions) without prior notice to the

1 Court and FTC. If the FTC objects to any proposed asset disposition, the Corporate
2 Defendants will not proceed with such disposition absent approval from the Court.” *Id.* at
3 24, Section IV.A.

4 2. In August 2013, Vemma entered into a lease of certain real property located
5 at 1621 West Rio Salado Parkway in Tempe, Arizona – property that it has since used as
6 its corporate headquarters. In January 2014, Vemma bought office furniture, fixtures and
7 equipment (the “FF&E”) for the corporate office with funds loaned by Wells Fargo
8 Equipment Finance (“WFEF”). As security for repayment of that equipment loan, Vemma
9 delivered two Security Agreements to WFEF, providing WFEF with a security interest in
10 all of the FF&E.

11 3. In January 2016, Vemma entered into a lease termination agreement with
12 the landlord for its corporate headquarters. Under the terms of that lease termination
13 agreement, Vemma was permitted to remain on site, as a month-to-month tenant, while
14 the landlord sought a new tenant.

15 4. After Vemma defaulted under the equipment loan, it entered into a
16 forbearance agreement with WFEF in February 2016. Pursuant to that forbearance
17 agreement, WFEF agreed not to foreclose on its security interests, or to otherwise exercise
18 its remedies, so long as Vemma continued to make monthly payments to WFEF and met
19 certain other obligations. In doing so, Vemma agreed to participate in good faith in trying
20 to sell the FF&E to any prospective tenant who might lease the corporate office space,
21 with all proceeds of any such sale being paid to WFEF due to its security interest.

22 5. American Airlines, which will be taking over Vemma’s corporate office
23 effective September 1, 2016, has agreed to buy the FF&E. The entire purchase price will
24 be paid to WFEF, who holds a security interest on the FF&E. None of the proceeds will
25 go to Vemma. WFEF has consented to the sale and will provide a lien release.

26

1 6. The Corporate Defendants do not believe that this sale involves “material
2 assets” that would be covered by Section IV of the Interim Order because the FF&E were
3 fully encumbered by WFEF’s security interest prior to the entry of the Interim Order.
4 However, out of an abundance of caution, prior to filing this motion, the Corporate
5 Defendants provided information and documents to the FTC regarding the proposed sale,
6 the original WFEF equipment lease and security agreement, and the forbearance
7 agreement.

8 7. The FTC does not object to the proposed sale of the FF&E to American
9 Airlines provided that the following conditions are met: (a) upon completion of the sale,
10 Vemma provides the FTC with copies of the sales transaction documents and confirmation
11 from WFEF of the amount of outstanding indebtedness and application of the proceeds to
12 the indebtedness; and (b) in the unlikely event that the proceeds from the sale exceed
13 Vemma’s indebtedness, Vemma agrees to place any net proceeds in a separate escrow
14 account until final resolution of this matter, unless otherwise ordered by the Court.
15 Vemma has agreed to these conditions.

16 8. Based on the representations set forth in this agreed motion, the FTC does
17 not oppose modification of the Court’s interim Order to permit this transaction to close on
18 the terms and conditions set forth herein. The FTC agrees to entry of a proposed form of
19 order, in the form attached as Exhibit A, which was lodged concurrently with the filing of
20 this agreed motion.

21 RESPECTFULLY SUBMITTED this 30th day of August, 2016.
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QUARLES & BRADY LLP

By /s/ Edward Salanga

John A. Harris
Kevin D. Quigley
Edward A. Salanga

*Attorneys for Defendants Vemma Nutrition
Company, Vemma International Holdings, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2016, I electronically transmitted and sent by First Class U.S. Mail Corporate Defendants’ Agreed Motion to Allow Sale of Furniture, Fixtures and Equipment to counsel as follows:

<p>Counsel for Plaintiff, Federal Trade Commission:</p> <p>David C. Shonka Acting General Counsel</p> <p>Jason C. Moon jmoon@ftc.gov Anne D. Lejeune alejeune@ftc.gov Emily B. Robinson erobinson@ftc.gov Zachary A. Keller zkeller@ftc.gov Federal Trade Commission 1999 Bryan Street Suite 2150 Dallas, TX 75201</p>	<p>Counsel for Receiver Robb Evans & Associates, LLC:</p> <p>Dentons US LLP Gary Owen Caris gary.caris@dentons.com</p> <p>Lesley Anne Hawes lesley.hawes@dentons.com</p> <p>Joshua S. Akbar joshua.akbar@dentons.com</p> <p>Counsel for Defendant Benson K. Boreyko:</p> <p>John R. Clemency john.clemency@gknet.com Lindi Michelle Weber lindi.weber@gknet.com Gallagher & Kennedy PA 2575 East Camelback Road Phoenix, AZ 85016</p>
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Bethany Alkazin:**

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Exhibit A

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Federal Trade Commission,

 Plaintiff,

v.

Vemma Nutrition Company, *et al.*,

 Defendants.

Bethany Alkazin, an individual,

 Relief Defendant.

No. CV-15- 01578-PHX-JJT

**ORDER APPROVING AGREED
MOTION TO ALLOW SALE OF
FURNITURE, FIXTURES, AND
EQUIPMENT**

This matter comes before the Court pursuant to the *Motion to Allow Sale of Furniture, Fixtures, and Equipment* (the “Motion”) filed by Defendants Vemma Nutrition Company (“Vemma”) and Vemma International Holdings, Inc. and agreed to by Plaintiff Federal Trade Commission (the “FTC”). For the reasons set forth in the Motion, and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is approved in its entirety.
2. To the extent necessary, the Court’s Interim Order (Dkt. #118) is modified to permit the sale of the FF&E (as defined in the Motion) to American Airlines, on the terms and conditions set forth in the Motion.
3. Upon closing of the sale of the FF&E, Vemma shall provide the FTC with copies of the sales transaction documents and confirmation from WFEF (as defined in the

1 Motion) of the amount of outstanding indebtedness and application of the proceeds to the
2 indebtedness.

3 4. Should there be any net proceeds from the sale after application of the proceeds
4 to Vemma's indebtedness, Vemma shall place such funds in a separate escrow account until
5 final resolution of this matter, unless otherwise ordered by the Court

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